

REMARKS/ARGUMENTS

Claims 1 though 8 are pending in the application. Claims 1 and 8 are amended to clarify the claimed invention. Claim 2 has been amended to correct a typographical error. Claims 6 through 8 have been amended to include the transitional phrase “comprising” as appropriate, which merely makes explicit what had been implicit in the claims, and should not affect the scope of equivalents to which the claims are entitled. No new matter has been added.

Claims 1 through 8 were rejected in the Action under 35 U.S.C. §112, 2nd paragraph. Claim 1 has been amended to clarify that the footrest may assume inclinations in all spatial directions in relation to the plane containing the base, as described in the application (page 2, lines 10 – 12). Claim 8 has been amended to clarify that the adjustable feet that make it possible to raise or lower the base as necessary or non-slip rubber pads are placed on that surface of the base that is in contact with the ground (page 2, lines 7 – 9), thereby also providing antecedent basis. Claims 2 through 8 were rejected as being dependent upon a rejected base claim, which are obviated by the amendment to claim 1. Applicant respectfully submits that the amendments have addressed each of the rejections brought under §112, 2nd.

Claims 1 through 7 were rejected under 35 U.S.C. §103(a) as unpatentable over French Patent No. FR 2 510 895 to Daninos (“Daninos”).

Daninos discloses an aid that is used for improving a user's sense of balance or equilibrium, where a user is shown standing in a crouched stance with both feet upon a single footrest bearing his entire weight (Figure 1). The equilibrium aid is a circular plate resting directly on the ground or on a flat plate (Abstract, lines 1 – 3). The base is narrow and convex and is formed in the center of the plate, enabling rotation, oscillation, and nutation movements to be made (Abstract, lines 4 – 5). The equilibrium aid can be hollow and filled partly or completely by a fluid (Abstract, line 6). The base can be interchangeable and joined to an elastically deformable pad (Abstract, lines 7 – 8). The base can also be concave and fit over a convex ball head (Abstract, line 8). The footrest is a bowl with an internal cavity containing a liquid mobile mass (claim 4; also page 3, lines 11 – 14 and Figure 3).

By contrast, the preferred embodiment of the present invention comprises a footrest consisting of a "...solid body suitable for resting feet, which is hollow inside and in the cavity thereof a mobile mass that accentuates and accompanies the movement of the footrests themselves" (page 3, lines 2 – 3). The footrest is provided with joints "such as to ensure free rotation of the footrests 11 on a plane parallel to the plane containing the base 10 and, simultaneously, their inclination in relation to said plane, in all spatial directions. Said joints must however have a suitable size to ensure that the footrests 11 may tilt in the various directions without touching the base 10 or the ground and preferably they *will be attached to the barycentre of the footrests 11*" (p. 2, lines 10 – 17) [emphasis added].

The applicable rule is that the following criteria must be met to establish a *prima facie* case of obviousness under 35 U.S.C. §103(a). First, the prior art relied upon,

coupled with the knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference, or combination of references, must teach or suggest all of the claimed limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, and not based on Applicant's disclosure. MPEP §2142, citing *in re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991).

Applicant respectfully submits that Daninos fails to support a *prima facie* case of obviousness as to independent claim 1 or dependent claims 2 through 8. In this instance, when the internal cavities of the footrests of the claimed invention are filled with a mobile mass, such as a liquid, the barycentre (center of mass) of the claimed invention becomes *lower than* (or coincident with) the position of the rotation joints, which are located at the barycentres of the empty footrests. This intrinsic instability provides a smooth, pendulum-like oscillation movement in the claimed invention that causes the user's feet to move in any of the spatial directions permitted by the rotation joints of the claimed device. The oscillating movement stimulates muscle tone and improves blood circulation in the lower limbs of the user, even when the user is seated and/or not paying voluntary attention. On the other hand, the equilibrium aid disclosed in Daninos consists of a container having near-conical shape with its barycentre always located *above* the rotation joint (or rotation fulcrum), even when the container has a liquid mobile mass within its internal cavity. The relationship of the barycentre above the rotation joint (or

rotation fulcrum) provides a high degree of instability to Daninos's equilibrium aid, thereby providing its function as an equilibrium trainer (see Figures 1 and 3; also page 3, lines 11 – 14). Daninos fails to disclose or suggest a footstool device where the barycentres of the footrests are positioned coincident or lower than the position of the rotation joints, nor is any suggestion or incentive provided in Daninos that would have motivated the skilled artisan at the time of this application to modify the disclosure so fundamentally as to produce the claimed invention with a reasonable expectation of success. Applicant therefore submits that the cited reference fails to support a *prima facie* case of obviousness for the independent claim.

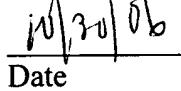
Likewise, for at least the same reasons as provided for the independent claim, dependent claims 2 through 8 would not be rendered obvious over Daninos.

Claim 8 has an additional distinction from the cited art, as the Action correctly acknowledges that Daninos does not disclose a base having non-slip rubber pads. Applicant respectfully traverses the Action taking Official Notice in the context of this rejection that prior art includes exercise devices having non-slip rubber pads, and disagrees with the Action that the skilled artisan at the time of this application would have found an incentive in Daninos to combine its equilibrium aid with non-slip rubber pads in a manner that rendered obvious the features of claim 8. Neither the disclosure nor drawings in Daninos disclose or suggest the use of such non-slip rubber pads beneath the equilibrium aid; in fact, one of its depicted uses (Figure 1) appears to teach away from a non-slip rubber pad under the base of the aid, as the equilibrium aid depicts a user

who appears able to move freely about the surface of the floor as needed to maintain his balance. Thus, for this additional reason, Applicant respectfully requests reconsideration and withdrawal of the rejection to claim 8 under §103(a).

Accordingly, Applicant submits that the cited reference, Daninos, fails to support a *prima facie* case of obviousness as to claims 1 through 8, and that the amendments have clarified the invention so as to overcome all rejections brought under §112. Applicant therefore respectfully requests reconsideration and withdrawal of all rejections to claims 1 through 8, and passage of this application to allowance.

Respectfully submitted,


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Date

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